

SENATE BILL 1325

By Tracy

AN ACT to amend Tennessee Code Annotated, Title 39,  
Chapter 17; Title 50 and Title 68, to enact the  
"Non-Smoker Protection Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 17, is amended by adding the following language as a new, appropriately designated part thereto:

§ 39-17-1801.

This part shall be known and may be cited as the "Non-Smoker Protection Act".

§ 39-17-1802.

As used in this part:

(1) "Acceptable form of identification" means:

- (A) A state-issued driver license;
- (B) A state-issued identification card;
- (C) A valid passport; or
- (D) A valid military identification;

(1) "Age-restricted venue" means a legal establishment that affirmatively restricts access to its buildings, facilities, products and services to persons who are twenty-one (21) years of age or older by requiring each patron who attempts to gain entry to such buildings or facilities or to utilize such products or services to submit for inspection an acceptable form of identification for the express purpose of determining if the patron is twenty-one (21) years of age or older;

(2) "Cigar bar" means an enclosed area that holds itself out to the public as a cigar bar, and in which:

(A) Access is denied to any person under the legal age for the purchase or sale of tobacco;

(B) Cigars are sold for consumption on the premises; and

(C) Sales of cigars and sales or rentals of cigar accessories account for not less than five percent (5%) of the annual gross revenues of the business;

(3) "Employee" means any person who performs any service on a full-time, part-time or contracted basis whether or not the person is denominated an employee, independent contractor or otherwise and whether or not the person is compensated or is a volunteer;

(4) "Employer" means a person, business, partnership, association, the State of Tennessee and its political subdivisions, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one (1) or more individual persons;

(5) "Enclosed area" means all space between a floor and ceiling that is enclosed on all sides by permanent or temporary walls or windows (exclusive of doorways), which extend from the floor to the ceiling. "Enclosed area" also includes a reasonable distance from any entrances, windows and ventilation systems so that persons entering or leaving the building or facility shall not be subjected to breathing tobacco smoke and so that tobacco smoke does not enter the building or facility through entrances, windows, ventilation systems or any other means;

(6) "Health care facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals,

rehabilitation hospitals or other clinics, including weight control clinics, homes for the chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities. This definition shall not include assisted-care living facilities or nursing homes as defined in § 68-11-201;

(7) "Person" means an individual, partnership, corporation, limited liability company, entity, association, governmental subdivision or unit of governmental subdivision, or a public or private organization of any character;

(8) "Physically separated" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passageway) and independently ventilated from smoke-free areas, so that air within permitted smoking areas does not drift or get vented into smoke-free areas;

(9) "Place of employment" means an enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, including office buildings, work areas, auditoriums, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, cafeterias, hallways, stairs, elevators, health care facilities, private offices and vehicles owned and operated by the employer during working hours when the vehicle is occupied by more than one (1) person. A private residence or vehicle is not a "place of employment" unless it is used as a child care, adult day care, or health care facility or taxi or other commercial vehicle for hire;

(10) "Private club" means an establishment not open to the general public;

(11) “Public place” means an enclosed area of any place to which the public is invited or in which the public is permitted, including airports, banks, common areas of multifamily housing facilities (i.e., apartment buildings and condominiums), entertainment venues, health care facilities, hotel and motel common areas, laundromats, public transportation facilities, reception areas, restaurants, retail food establishments, retail service establishments, retail stores, schools, shopping malls, sports facilities, theaters, and waiting rooms. A private residence or vehicle is not a “public place” unless it is used as a licensed child care, adult day care, or health care facility or taxi or other commercial vehicle for hire;

(12) “Retail tobacco store” means a retail store that derives its largest category of sales from tobacco products and accessories. “Retail tobacco store” does not include grocery stores, convenience stores, gas stations, general retailers or similar retail establishments;

(13) “Smoking” means inhaling, exhaling, burning, or carrying or possessing any lighted tobacco product, including cigars, cigarettes, pipe tobacco and any other lighted tobacco product; and

(14) “Sports facilities” means enclosed areas of sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, billiard halls, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sporting events.

§ 39-17-1803.

Except at otherwise specifically authorized in § 39-17-1804, smoking is prohibited in all public places and places of employment within the state of Tennessee.

§ 39-17-1804.

Notwithstanding any other provision of this part, the following areas shall be exempt from the provisions of § 39-17-1803:

(1) Private residences, except when used as a licensed child care, adult day care, or health care facility, taxi or other commercial vehicle for hire;

(2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms;

(3) Retail tobacco stores that prohibit minors on their premises;

(4) Non-enclosed areas of public spaces (e.g., outdoor patios), so long as tobacco smoke is not reasonably expected to enter areas where smoking is prohibited;

(5) Enclosed smoking areas of a building or facility that are physically separated and independently ventilated from areas of the building or facility where smoking is prohibited;

(6) Age-restricted venues;

(7) Cigar bars;

(8) Private clubs;

(9) Private vehicles, except when used for the public transportation of children or for transportation by a health care facility or day care facility or when used as a taxi or other commercial vehicle for hire; and

(10) All premises of any manufacturer, importer, or wholesaler of tobacco products, of any tobacco leaf dealer or processor, all tobacco storage facilities, and any other entity set forth in § 47-31-102.

§ 39-17-1805.

Notwithstanding any other provision of this part, an owner, operator, manager, or other person or entity in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place.

§ 39-17-1806.

(a) “No smoking” signs or the international “no smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted by the owner, operator, manager, or other person in control of that place identifying where smoking is prohibited by this part and where complaints regarding violations thereof may be registered.

(b) Every public place and place of employment where smoking is prohibited by this part shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

(c) All ashtrays shall be removed from any area where smoking is prohibited by this part by the owner, operator, manager, or other person having control of the area.

§ 39-17-1807.

(a) No employer may discharge or retaliate against an employee because that employee exercised any rights afforded by this part or reported or attempted to prosecute a violation of this part.

(b) An owner, manager, operator or employee of a place regulated by this part shall inform any person who is smoking in violation of this part that smoking is not allowed at such place and request that the person stop smoking immediately.

§ 39-17-1808.

(a) This part does not create any new private right of action nor does it extinguish any existing common law causes of action.

(b) A person who smokes where smoking is prohibited is guilty of a Class C misdemeanor punishable only by a fine of not less than fifty dollars (\$50.00) and not more than three hundred dollars (\$300).

(c) Any law enforcement officer may issue a citation regarding a violation of this part.

§ 39-17-1809.

To protect the private property rights of all persons who own age-restricted venues and retail tobacco stores in this state, the state of Tennessee finds and determines a single statewide standard for smoking in enclosed areas that are also public places to be a matter of statewide concern. It is declared that this section preempts all municipal and county laws, charters, ordinances, rules and regulations relating to smoking in the locations set forth in this part.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.